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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.689 OF 2005
IN
SUIT NO.216 OF 2005

Ashok Narhari Gore)..Plaintiff

Versus

Reliance Infocom Ltd. and others)..Defendants

Mr.Sanjay Kothari with Mr.M.P.Narayanswami i/b. M/s.Shroff & Co. for the Plaintiff.

Mr.Vipul Shukla for Defendant No.1.

Mr.V.B.Kanoria for Defendant Nos.3 to 5.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 13TH JULY 2006

P.C.:

. The Plaintiff contends that by an agreement of 19th May 1995 he had assigned the property to M/s.Vaishali Associates for development. Under some of the clauses of the agreement, the Plaintiff contends that he was entitled to retain open spaces and garages as well as the terrace of the building proposed to be constructed. The Plaintiff now contends that Defendant No.1 has erected a tower on the terrace without his permission. The Plaintiff contends that the terrace has remained under his ownership as he has not assigned this portion of the premises to the builder, who could not in turn convey the same to the proposed society being Sai

Prasad Co-operative Housing Society Ltd.

2. Defendant Nos.3 to 5 are the office bearers of this proposed society who are also flat purchasers. Defendant No.3 has purchased flat No.102 from the Plaintiff vide registered agreement for sale dated 3rd July 1992. Clause 24 of this agreement reads as under :

> 24. Nothing herein contained is intended to be nor shall it be construed as a grant, demise or assignment in law of the said premises and/or the said building and/or the said lands on part thereof. The Purchaser(s) shall have no claim save and except in respect of the said premises hereby agreed to be sold to him/her/them and all open spaces, parking spaces, lobbies, staircase, terraces, recreation grounds etc. will remain the property of the Vendor/Developers until the said land and the said building standing thereon is duly transferred in favour of a registered Co-operative Housing Society or a Limited company as hereinabove mentioned.

3. Undisputedly, the society has been registered on 25th April 2006. Therefore, in accordance with the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, the conveyance of the entire property to the society must be deemed to have been effected. In my view, therefore, the Plaintiff, prima facie, would have no exclusive right to the terrace but only as a member of the society.

3. Hence, Motion dismissed.